

1980

Judges' Salaries

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Judges' Salaries California Proposition 11 (1980).
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Official Title and Summary Prepared by the Attorney General

JUDGES' SALARIES. LEGISLATIVE CONSTITUTIONAL AMENDMENT. Establishes base salary of a judge of a court of record, beginning on January 1, 1981, as equal the annual salary payable as of July 1, 1980, for that office had the judge been elected in 1978. Provides Legislature may prescribe salary increases during a term of office, may terminate prospective increases at any time during a term of office, but shall not reduce a salary during a term of office below the highest level paid during that term. Provides that laws setting the salaries of judges shall not constitute an obligation of contract. Fiscal impact on state and local governments: State salary and pension reductions of approximately \$2.7 million from 1981 through 1986.

FINAL VOTE CAST BY THE LEGISLATURE ON SCA 37 (PROPOSITION 11)

Assembly—Ayes, 72
Noes, 0

Senate—Ayes, 30
Noes, 3

Analysis by the Legislative Analyst

Background:

The Constitution requires the Legislature to set salaries and provide retirement benefits for judges serving on the Supreme Court of California, the courts of appeal, the superior courts, and the municipal courts. The Constitution prohibits the Legislature from reducing the salaries of elected state officers (including judges) during their term of office. The Constitution also prohibits the Legislature from passing any law that impairs the obligation of a contract.

In 1969, legislation was enacted under which judges received an automatic annual salary increase based on the annual percentage increase in the California Consumer Price Index. This automatic increase applied to judges' pensions as well, because pension benefits are tied to the salaries of active judges.

In 1976, the Legislature passed a law that (1) froze judges' salaries on January 1, 1977, for 18 months and (2) limited subsequent annual salary increases for judges to a maximum of 5 percent.

The Supreme Court of California has ruled that the 1976 law was partly inconsistent with the Constitution because it, among other things, impaired the employment contracts between certain judges and the state. Specifically, the court ruled that in the case of judges who were in office *before* January 1, 1977 (when the 1976 law became effective), neither the salary freeze nor the 5-percent limit on subsequent salary increases could be applied until those judges began *new* terms of office.

Because of the court's ruling, there is now a two-tier salary structure for judges, one based on the 1976 law and a higher one based on the 1969 law. Thus, as of January 1981:

- Four associate judges of the Supreme Court will be paid \$88,685 annually, while the other two associate judges will be paid \$72,855.
- Twenty-three judges of the courts of appeal will be paid \$83,143, while the other 36 judges of these courts will be paid \$68,303.

As their terms expire, the base salaries of the judges receiving these higher amounts will be reduced to the same levels as those paid to the other judges whose salary increases are limited to 5 percent annually.

Pensions of certain retired judges and their survivors also increased as a result of the Supreme Court's ruling, because pension benefits are tied to active judges' salaries. Generally, a retired judge receives an allowance equal to either 65 percent or 75 percent of the current salary paid to the judge holding the office to which the retired judge was last elected.

Proposal:

This measure would amend the State Constitution to produce the following effects:

- It would eliminate, effective January 1, 1981, the additional pay being received by each judge whose base salary was increased as a result of the Supreme Court's ruling.
- It would eliminate, effective January 1, 1981, the additional pension benefits being received by each retired judge (or survivor) as a result of the court's ruling.
- It would authorize the Legislature to terminate expected *increases* in judges' salaries *during* their term of office, provided that such action does not cause a reduction in the actual salaries paid to judges during their term.
- It would specifically provide that salaries of judges are not considered an obligation of contract.

Fiscal Effect:

This measure would have the following impact on state costs:

1. *Based on the present two-tier salary structure, it would reduce state costs for judges' salaries and pensions by approximately \$2.7 million from 1981 through 1986.* The 27 judges who would otherwise continue to receive higher salaries than other judges as a result of the Supreme Court's ruling would have

their base salary reduced effective January 1, 1981, rather than on the dates their present terms expire. Of these judges, 14 have terms that expire in January 1983, and 13 have terms that expire in January 1987.

In addition, there would be a reduction in the cost of pensions paid to those retired judges (or survivors) who are receiving benefits tied to the active judges' salaries which would be reduced.

2. *State costs for judges' salaries and pensions would be further reduced by an unknown amount to*

the extent that future annual increases in the California Consumer Price Index exceed 5 percent. This is because, under the measure, future salary increases for these 27 judges would no longer be tied to the California Consumer Price Index, but would instead be limited under current law to a maximum of 5 percent annually.

Additional cost savings could result if, in the future, the Legislature eliminates expected increases in judges' salaries during a term of office.

Text of Proposed Law

This amendment proposed by Senate Constitutional Amendment 37 (Statutes of 1980, Resolution Chapter 77) expressly amends the Constitution by amending a section thereof; therefore, existing provisions proposed to be deleted are printed in ~~strikeout type~~ and new provisions proposed to be inserted or added are printed in *italic type* to indicate that they are new.

PROPOSED AMENDMENT TO ARTICLE III

SEC. 4. (a) *Except as provided in subdivision (b),* ~~Salaries~~ *salaries* of elected state officers may not be reduced during their term of office. Laws that set these salaries are appropriations.

(b) *Beginning on January 1, 1981, the base salary of a judge of a court of record shall equal the annual salary payable as of July 1, 1980, for that office had the judge been elected in 1978. The Legislature may prescribe increases in those salaries during a term of office, and it may terminate prospective increases in those salaries at any time during a term of office, but it shall not reduce the salary of a judge during a term of office below the highest level paid during that term of office. Laws setting the salaries of judges shall not constitute an obligation of contract pursuant to Section 9 of Article I or any other provision of law.*

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Argument in Favor of Proposition 11

Passage of this proposition will save California taxpayers several million dollars by reasserting control over judicial salaries to prevent a substantial windfall by 27 State Supreme Court and court of appeal justices.

Prior to 1976, the salaries of California judges rose each year along with the consumer price index. In 1976, to prevent excessive raises in a period of high inflation, the California Legislature placed a 5-percent limit on the amount by which judicial salaries could increase each year. Some of the judges brought a lawsuit to do away with the 5-percent-per-year limit and return to the previous formula that tied judicial salaries to the consumer price index with no limitation on the annual increase. In the case of *Olson v. Cory*, 27 Cal.3d 203 (1980), the California Supreme Court found the 1976 legislative 5-percent limit on pay raises to be unconstitutional when applied to judges who were serving terms of office that began before the limit was imposed.

As a result of the decision, many California judges received salary increases and sizable back pay awards. Because superior and municipal court judges serve only six-year terms, by January of 1981 all of them, the substantial majority of the state's judges, will have reverted to the lower salary calculated by applying the 5-percent legislative limit to their annual raises. However, because Supreme Court and court of appeal justices serve 12-year terms, unless this proposition is adopted, 2 Supreme Court and 12 court of appeal justices will earn inflated salaries through 1983, and 2 other Supreme

Court and 11 other court of appeal justices will earn inflated salaries through 1987.

For example, assuming a 10-percent inflation rate over the next six years, in 1986, two Justices of the Supreme Court would be earning \$157,111 per year doing the same work as their five colleagues on the same court earning \$97,633. Unless this proposition is passed, over the next six years those two Supreme Court Justices would earn a total of \$203,255 more than their fellow justices.

This proposition will equalize the salaries of all judges of the same rank at the level established in accordance with the 5-percent-per-year formula adopted by the California Legislature in 1976, and will permit the Legislature in the future to control salaries as circumstances warrant. This bill passed the Assembly by a vote of 72 to 0 and the Senate 30 to 3, with almost unanimous support from both Democrats and Republicans.

This proposition simply reasserts legislative control over future salary increases of judges. The Controller has estimated that it will save the taxpayers in excess of \$3,000,000. We urge you to vote Yes on Proposition 11.

JOHN GARAMENDI
State Senator, 13th District

CHARLES R. IMBRECHT
Member of the Assembly, 36th District

KENNETH HAHN
Los Angeles County Supervisor, 2nd District

Rebuttal to Argument in Favor of Proposition 11

Judges need cost-of-living raises that keep up with inflation just as much as everyone else. Proposition 11 would perpetuate the injustice of limiting salary increases to 5 percent in these days of double-digit inflation. The logical solution to the inequities involved is to return to the former system of adjusting judges' salaries in accordance with the consumer price index.

Proposition 11 does far more than correct the inequities stated. It also adds a provision to the State Constitu-

tion that judges' salaries shall not constitute an obligation of contract and gives the Legislature the power to terminate prospective increases in salary. The State Constitution should not be amended in such a way as to give the Legislature more power over the judiciary. Vote No!

TIMOTHY D. WEINLAND
Attorney at Law

Study each issue carefully

Argument Against Proposition 11

Proposition 11 would increase the Legislature's power to limit cost-of-living pay adjustments for justices serving on the state's Supreme Court and courts of appeal. It would give the Legislature the power to at any time terminate prospective increases that have been promised and would declare that the salaries of judges shall not constitute an obligation of contract.

Increasing the Legislature's power over the judiciary would set a dangerous precedent. An independent judiciary is absolutely vital to the State of California. The Legislature should not have the power to terminate cost-of-living increases any time that a court renders an

unpopular decision.

The problems that Proposition 11 attempts to address could better be solved through an independent, non-partisan commission empowered to set the justices' salaries. Such a commission could be limited to economic considerations.

Don't give the Legislature more power over the judiciary! Don't deny justices cost-of-living increases that everyone needs in these days of runaway inflation! Vote No!

TIMOTHY D. WEINLAND
Attorney at Law

Rebuttal to Argument Against Proposition 11

The only arguments against Proposition 11 have been raised by a single attorney claiming it will:

- Give new power to the Legislature.
- Threaten the independence of the judiciary.
- Deny judges' salary increases.

The opposition is wrong on every point.

Proposition 11 does not give the Legislature new power over judicial salaries. Prior to the Olson decision, there was no question that the Legislature had the ability to control judges' pay in the same manner it sets salaries for all other state officers. Proposition 11 returns control over judges' pay to the Legislature.

Proposition 11 does not threaten the independence of the judiciary. Read the actual text of subdivision (a) yourself. Judges' salaries cannot be *reduced* during their term for any reason. This measure merely insures that the Legislature, not the courts, shall determine the amount of future salary *increases*.

Proposition 11 does not deny judges cost-of-living increases. By statute judges currently receive annual

raises equal to 5 percent of their salary, or the raise given other state employees, whichever is less. However, the *Olson* decision gave 27 Supreme and appellate court justices additional unlimited increases tied to the consumer price index. Unless Proposition 11 passes, these 27 judges will receive many thousands of dollars more each year than their colleagues doing the same work on the same court.

California judges are already among the highest paid in the world. It would be absurd to prohibit legislators elected by the people from controlling the amount of future increases.

Vote "YES" on Proposition 11.

JOHN GARAMENDI
State Senator, 13th District

CHARLES IMBRECHT
Member of the Assembly, 36th District

KENNETH HAHN
Los Angeles County Supervisor, 2nd District

Polls are open from 7 a.m. to 8 p.m.